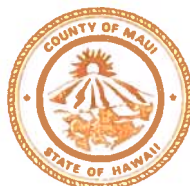


MICHAEL P. VICTORINO  
Mayor  
MICHELE CHOUTEAU MCLEAN, AICP  
Director  
JACKY TAKAKURA  
Deputy Director




**DEPARTMENT OF PLANNING**  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

December 13, 2022

**MEMORANDUM**

TO: MS. P. DENISE LACOSTA, Chair  
and Members of the Maui Planning Commission

FROM: MICHELE CHOUTEAU MCLEAN, AICP, Planning Director 

SUBJECT: **TRANSMITTAL OF PROPOSED RESOLUTION AGREEMENT  
BETWEEN THE COUNTY OF MAUI AND A&B PROPERTIES,  
ROGER THORSON AND HUGH STARR FOR PLACEMENT OF  
GRAVEL AND BOULDERS WITHIN THE SHORELINE AREA  
AND SPECIAL MANAGEMENT AREA (SMA) WITHOUT  
SHORELINE OR SMA PERMITS ON PROPERTY LOCATED AT  
KEALAKAI PLACE, PAIA, HAWAII, TMK (2) 3-8-001: 072.**

This memorandum transmits the proposed Resolution Agreement (attached) for your review and action. The Maui Planning Commission (Commission) may take final action on the proposed Resolution Agreement pursuant to the provisions of Section 12-203-17 of the Maui Planning Commission's Shoreline Rules and Section 12-202-23(d)(3) of the Maui Planning Commission's Special Management Area (SMA) Rules. The Resolution Agreement is for the property owner, A&B Properties, Inc., Roger Thorson and Hugh Starr (together the Responsible Parties) to pay a fine of \$10,000.00 for violations related to Notices of Violation (NOVs) 2019/0074 and 2019/0075, and to complete a shoreline restoration and protection project with proper permits.

As background, A&B Properties owns oceanfront property in Paia, known as Wawau Point or Baby Beach, that is enjoyed by residents and visitors. This coastline has undergone seasonal wave inundation leading to erosion and scouring to the extent that the clay embankment is unstable and deteriorating, which has been exacerbated by vehicles driving and parking close to the shoreline. To address this concern, Thorson and Starr, as community volunteers, had a single load of gravel placed in an eroding soil depression near the shoreline and in the area where vehicles park, and installed boulders to limit vehicular access.

The Department of Planning (Department) received a complaint about this activity, and its investigation resulted in the issuance of two NOVs, each with an initial fine of \$60,000 and daily fines of \$1,200. Upon receipt of the NOVs, Thorson and Starr immediately removed the boulders and gravel, and initiated meetings with the Department. Therefore, daily fines did not accrue.

The Department and the Responsible Parties agree that the existing shoreline condition should be addressed because it presents safety and environmental concerns. As such, Thorson and Starr prepared a restoration and revegetation plan in collaboration with the Department's Shoreline Planners and the University of Hawaii – Sea Grant Extension Agent to install boulders to block vehicles from parking too close to the shoreline, revegetate formerly vegetated areas, install signage, and install a gate that can be closed if needed. The Department issued SMA minor and Shoreline permits in October 2019, June 2020 and November 2020 for this work. The work has since been completed and was conducted almost entirely by community volunteers. The Responsible Parties submitted a project close-out letter via email (attached), which the Department has accepted. Photographs are also attached.

Because the project has direct public and environmental benefits, and because the work was conducted almost entirely by community volunteers organized by Thorson and Starr, the Department believes that a reduction in the fines is appropriate since substantial funding was directed toward implementation of the project.

The Department and the responsible parties have agreed to reduce the total initial fines to \$10,000 from \$120,000, and for the Responsible Parties to cover the costs of the project, which are estimated to be \$185,131.

The Department recommends that the Maui Planning Commission authorize approval of the Resolution Agreement between A&B Properties, Roger Thorson, Hugh Starr and the County of Maui.

Attachments (3):  
Resolution Agreement  
Close-out Letter  
Photographs (6)

xc: Candace Thackerson, Supervising Shoreline Planner (pdf)  
Gail Davis, Supervising Zoning Inspector (pdf)  
Tara Owens, UH-Sea Grant Extension Agent (pdf)  
Wes Crile, UH-Sea Grant Extension Agent (pdf)

MCM:atw

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## RESOLUTION AGREEMENT

This Agreement ("Agreement") is entered into by and between the County of Maui ("County") and A&B Properties Hawaii LLC ("A&B"), Roger Thorson ("Thorson") and Hugh Starr ("Starr") (collectively "the Responsible Parties").

### RECITALS

WHEREAS, A&B is the owner of real property located at Kealakai Place, Paia, Maui, Hawaii, 96779, TMK: (2) 3-8-001: 072, a portion of which is commonly known as Wawau Point and Baby Beach ("Property"); and,

WHEREAS, the Property is located within the Special Management Area (SMA) as defined by Hawaii Revised Statutes (HRS) Section 205A-22 and a portion of the Property is within the Shoreline Area as defined under HRS Section 205A-41; and,

WHEREAS, the coastline fronting the Property has undergone seasonal wave inundation leading to erosion and scouring to the extent that the clay embankment is unstable and deteriorating, which has been exacerbated by vehicles driving and parking close to the shoreline; and

WHEREAS, on May 21, 2019, the County, through its Zoning Administration and Enforcement Division of the Planning Department (Department), observed that gravel and boulders had been placed in the SMA and Shoreline Area of the Property; and,

WHEREAS, the Department issued a Notice of Violation (NOV 2019/0074), dated June 4, 2019, for placing gravel and boulders on the Property without obtaining Shoreline Setback approval and a second Notice of Violation (NOV 2019/0075), dated June 4, 2019, for the same actions without obtaining SMA approval, with each NOV assessing an initial fine of \$60,000 and daily fines of \$1,200 (collectively "NOVs"); and,

WHEREAS, the Thorson and Starr immediately stopped work, the Department issued a SMA exemption and Shoreline Setback Approval for the removal of the gravel and boulders (SM5 2019/0110 and SSA 2019/0027 dated June 4, 2019), and the Responsible Parties removed the gravel and boulders on June 5, 2014, thus accruing only one day of daily fines of \$1,200 for each violation, totaling \$2,400, and retaining the two initial fines of \$60,000, totaling \$120,000, for a final total of \$122,400; and,

WHEREAS, by letters dated June 27, 2019, Thorson and Starr each requested a hearing on the two NOVs pursuant to the Maui Planning Commission's SMA and Shoreline Rules; and

WHEREAS, the Responsible Parties maintain and the County does not dispute that action needed to be taken at Wawau point to prevent further erosion and degradation from vehicles, and to protect the public health and safety, and that the actions were largely to benefit the public and not any private interests; and,

WHEREAS, the County and the Responsible Parties have proceeded in a collaborative manner so that Wawau Point is appropriately maintained and protected and public safety is enhanced; and,

WHEREAS, the Responsible Parties have worked with the County's shoreline planners and University of Hawaii – Sea Grant Extension Agents to develop a plan to appropriately protect the shoreline, consisting of installing boulders to prevent parking at the shoreline of Wawau Point, installing native vegetation to further curtail vehicular activity on the point, and filling depressions in the surface with gravel to facilitate parking in areas where it is appropriate (the "restoration plan"); and,

WHEREAS, the Department issued SMA minor permits and Shoreline Setback Approval for signage at the beginning of Kealakai Place and on the point to state that overnight parking, camping and other activities are prohibited, for the relocation of boulders and other needed improvements, and to allow Kealakai Place and the point to be blocked to vehicular traffic to allow the restoration plan to be implemented (SM2 2019/0096, dated October 9, 2019, SM2 2020/0060 and SSA 2020/0017, dated June 26, 2020, and Amendment to SM2 2020/0060 and SSA 2020/0017, dated November 19, 2020); and

WHEREAS, the Responsible Parties and the County recognize that the restoration plan benefits the public and the environment by:

- a. protecting the shoreline area from further degradation by the placement of boulders and installation of native vegetation;
- b. reducing the risk of further erosion of the point;
- c. providing safe and orderly vehicular parking at the point for fishermen, beach goers and others who enjoy Wawau Point and Baby Beach; and
- d. promoting safe shoreline access.

WHEREAS, the County issued the necessary permits so that the restoration plan could proceed, despite the subject fines being outstanding, finding that the restoration plan will have the public benefits described above; and,

WHEREAS, the costs expended to date by the Responsible Parties total approximately \$185,131 as follows: professional planning services (\$28,348), gate and sign design (\$2,940), community engagement (\$21,450), governmental meetings (\$11,675), construction work, including materials (\$68,217), entrance gate manufacture, installation and archaeological monitoring (\$16,651) and permit fees and consulting (\$35,850); and,

WHEREAS, the County and the Responsible Parties entered into discussions which resulted in this Agreement concerning the fines imposed by the NOV's and the cost of the restoration plan.

NOW, THEREFORE in consideration of the above recitals and the terms stated below, the County and the Responsible Parties agree as follows:

1. The County and the Responsible Parties agree that within ninety (90) calendar days of the approval of this Agreement by the Maui Planning Commission, the Parties shall pay fines in the total amount of \$10,000.00, representing \$5,000 for each of the two NOV's. The full payment of these fines and the costs expended to date by the Responsible Parties to implement the restoration plan shall constitute payment in full of the fines assessed by the NOV's.

2. Upon approval of this agreement and the payment of \$10,000 in total fines, total fines relating to the two NOV's will be deemed to be paid, the two NOV's will be deemed to be satisfied, there will remain no additional outstanding claims concerning the two NOV's except as otherwise provided in this Agreement, and the County will close the NOV's.

3. This Agreement, and any substantive modifications or alternatives thereto, is subject to the approval of the Maui Planning Commission, as provided in the Rules adopted by the Maui Planning Commission.

4. This Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii.

5. The parties have been represented by attorneys and therefore neither party shall be considered the drafter of this Agreement in the event that it is subject to interpretation by an administrative body or by a court of competent jurisdiction. As such, no negotiations concerning this Agreement shall be construed in any manner to limit, reduce or impair the rights, remedies, duties or obligations of the parties under this Agreement or restrict the meaning of any provision of this Agreement.


6. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement. The parties agree that the terms have been read, that the provisions are fully understood, that the document has been approved by their respective counsel, and that the document has been signed by their respective representatives, effective as of the date of the last signatory of this Agreement.

7. Upon full execution and approval of this agreement by the Maui Planning Commission, Thorson and Starr will withdraw their requests for a hearing related to the NOV's.

8. This Agreement may be executed in counterparts and facsimile, each of which when taken together shall constitute one and the same document in the same way if all parties had signed the same document.

WE HAVE SIGNED THIS AGREEMENT effective as of the last of the dates affixed below.

A&B Properties Hawaii LLC

By:   
Carol K. Reimann  
Its: Vice President, Series T

Date: 11/18/22

COUNTY OF MAUI

By: \_\_\_\_\_  
Chairperson  
Maui Planning Commission

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Roger Thorson

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Hugh Starr

Date: \_\_\_\_\_

APPROVAL RECOMMENDED

By:   
Michele C. McLean, AICP  
Director, Department of Planning

Date: November 17, 2022

A&B Properties Hawaii LLC

**COUNTY OF MAUI**

By: \_\_\_\_\_


Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Chairperson  
Maui Planning Commission

Date: \_\_\_\_\_


By:   
Roger Thorson

Date: 11/29/22

By:   
Hugh Starr

Date: 11/28/22

**APPROVAL RECOMMENDED**

By:   
Michele C. McLean, AICP  
Director, Department of Planning

Date: November 17, 2022



**Michele McLean - Close Out Letter RE: SM2 2020/0060,,SSA 2020/0017,,EAE 2020/0039 at Wawau Point, Spreckelsville, Maui**

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**From:** hugh starr <starr@maui.net>  
**To:** Michele McLean <Michele.McLean@co.maui.hi.us>  
**Date:** 11/28/2022 10:40 PM  
**Subject:** Close Out Letter RE: SM2 2020/0060,,SSA 2020/0017,,EAE 2020/0039 at Wawau Point, Spreckelsville, Maui  
**Cc:** Jason Koga <jkoga@abhi.com>, Roger Thorson <rogethor@gmail.com>  
**Attachments:** Wawau Point Entrance Gate 11-28-22.jpg; Wawau Point SITE PLAN 11-28-22.jpg; Before-After Wawau Point Aerials 11-28-22.jpg; Before-After Wawau Main Path 11-28-22.jpg; Before-After Middle Path 11-28-22.jpg; Before- After Surf Path 11-28-22.jpg

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Dear Director McLean:

As requested, I am transmitting a "Close Out Letter" for the above-cited Permits on behalf of the landowner, A&B Properties Hawaii, LLC., Mr. Roger Thorson, and myself.

We are please to advise that the Wawau Point Project has been completed as of November 28, 2022 as follows:

1. Completion of instructional signs as indicated on the attached Site Plan. Considering the preponderance of existing signage at the entrance to the Wawau Point private property and considering the aesthetics of the Point entrance way we elected to install a single prominent 24" x 30" entrance sign.
2. Four 12' x 18" parking signs have been installed per the attached Site Plan.
3. Four "Shoreline Pathway" signs have been installed per the attached Site Plan.
4. Large basalt rock boulders have been installed around the approximate exiting paved parking area perimeter.
5. A 14-foot wide entrance gate has been installed, per the attached Site Plan.
6. Three distinct formerly bare ground areas have been planted with Naupaka, per the attached Site Plan.
7. Four distinct Shoreline pathway access corridors have been established.

The Project construction was conducted in compliance with the conditions set forth in the above-cited permits.

Members of the Spreckelsville community have indicated a willingness to informally monitor site conditions at Wawau Point and communicate with Wes Crile of U.H. Sea Grant as needed. Specifically, Ms. Patti Cadiz, Ms. Dana Dawes, Mr. Roger Thorson, and other willing volunteers have been instrumental in providing advice and support and are willing to continue doing so.

Please let us know if you have any questions.

Thank you,

Hugh Starr



Wawau Point  
Entrance Gate  
11-28-22













June 22, 2019



November 28, 2022





May 18, 2020



November 28, 2022





January 10, 2020



November 28, 2022

